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Supreme Court of the United States

OCTOBER TERM, 1952

No. 242

VERNIE BAILLESS, COUNTY TREASURER, CADDO
COUNTY, OKLAHOMA, ET AL., PETITIONERS,

vs.

JUANA PAUKUNE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF OKLAHOMA

PETITION FOR CERTIORARI FILED JULY 31, 1952

CERTIORARI GRANTED OCTOBER 13, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No.

VERNIE BAILLESS, COUNTY TREASURER, CADDO
COUNTY, OKLAHOMA, ET AL. PETITIONERS,

vs.

JUANA PAUKUNE

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF OKLAHOMA

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**IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA**

No. 34547

VERNIE BAILLESS, County Treasurer of Caddo County, Oklahoma, W. B. COLEMAN, County Assessor of Caddo County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS OF CADDO COUNTY, OKLAHOMA, composed of TED A. JONES, FRANK DUNCAN and GEORGE D. NIXON, Plaintiffs in Error,

vs.

JUANA PAUKUNE, Defendant in Error

PETITION IN ERROR—Filed February 10, 1950

The said Vernie Bailless, County Treasurer of Caddo County, Oklahoma, W. B. Coleman, County Assessor of Caddo County, Oklahoma; and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon, plaintiffs in error, complain of said defendant in error, for that the said Juana Paukune, at the July, 1949, term of the District Court of Caddo County, State of Oklahoma, recovered a judgment, by consideration of said Court, against the said Vernie Bailless, County Treasurer of Caddo County, Oklahoma, W. B. Coleman, County Assessor of Caddo County, Oklahoma; and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon, in a certain action then pending in the said Court, wherein the said Juana Paukune was plaintiff and the said Vernie Bailless, County Treasurer of Caddo County, Oklahoma, W. B. Coleman, County Assessor of Caddo County, Oklahoma; and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon were defendants. The original case-made, duly signed, attested, and filed, is hereunto attached, marked "Exhibit A", and made a part of this petition in error; and the

said Vernie Bailess, County Treasurer of Caddo County, W. B. Coleman, County Assessor of Caddo County, Oklahoma; and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon avers that there is error in the said record and proceedings, in this to-wit.

(1) Said Court erred in overruling the motion of plaintiffs in error for a new trial.

(2) Said Court erred in not rendering judgment for the plaintiffs in error.

(3) That the judgment of the Court is contrary to law.

(4) That the judgment of the Court is contrary to the evidence.

(5) Error of the Court in granting permanent injunction. [fol. 5] (6) Error of the Court in finding lands not taxable for ad valorem taxes.

(7) Said Court erred in overruling demurrer to the evidence.

Wherefore plaintiffs in error pray that said judgment so rendered be reversed, set aside, and held for naught, and that a judgment may be rendered in favor of the plaintiffs in error, and against the defendant in error, and that the injunction and restraining order be dissolved and the plaintiffs in error be restored to all rights lost by rendition of such judgment, and for such other relief as to the Court may seem just.

Vernie Bailess, County Treasurer of Caddo County, Oklahoma, W. B. Coleman, County Assessor of Caddo County, Oklahoma; and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon By (Frank Limerick), County Attorney of Caddo County, Oklahoma.

(Brewster McFadyen), Attorney for Plaintiffs in Error.

[fol. 6] I, hereby certify that a true and exact copy of the above petition, was by me mailed to Jim Hatcher, attorney of record for defendant in error, at Chickasha, Oklahoma, on the 9th day of February, 1950.

Brewster McFadyen.

[fols. 7-9] **Exhibit "A" to Petition in Error**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA,

VERNIE BAILLESS, County Treasurer of Caddo County, Oklahoma, W. B. COLEMAN, Assessor of Caddo County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS OF CADDO COUNTY, OKLAHOMA, composed of TED A. JONES, FRANK DUNCAN and GEORGE D. NIXON, Plaintiffs in Error,

VS.

JUANA PAUKUNE, Defendant in Error

Case Made from the District Court of the Fifth Judicial District of Oklahoma—Filed February 10, 1950

Appearances:

For Plaintiffs in Error: Frank Limerick, County Attorney, Caddo County, Oklahoma; Anadarko, Oklahoma. Brewster McFadyen, Anadarko, Oklahoma, Special Counsel.

For Defendant in Error: Hatcher & Bond, Chickasha, Oklahoma.

[fol. 10] IN THE DISTRICT COURT IN AND FOR
CADDO COUNTY, STATE OF OKLAHOMA

No. 15445

JUANA PAUKUNE, Plaintiff,

VS.

VERNIE BAILLESS, County Treasurer, Caddo Co., Okla., and W. B. COLEMAN, Assessor of Caddo County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS OF CADDO COUNTY, OKLAHOMA, composed of TED A. JONES, FRANK DUNCAN and GEORGE D. NIXON, Defendants

PETITION—Filed October 15, 1948

Comes now the plaintiff, Juana Paukune, and for cause of action against the defendants Vernie Bailless, County Treas-

urer of Caddo County, Oklahoma, and W. B. Coleman, Assessor of Caddo County, Oklahoma, and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon, alleges and states:

[fol. 11] 1. That she is the owner of the beneficial interest in and to an undivided $1/3$ interest in and to the following described land located in Caddo County, State of Oklahoma, to-wit:

Southeast Quarter of Southwest Quarter ($SE\frac{1}{4}$ $SW\frac{1}{4}$) and Southwest Quarter of Southeast Quarter ($SW\frac{1}{4}$ $SE\frac{1}{4}$) Sec. 3, and North Half of Northeast Quarter ($N\frac{1}{2}$ $NE\frac{1}{4}$) of Sec. 10, Township 5 North, Range 9 West of I. M. containing 160 acres,

as evidenced by a certificate called a trust patent, #951, issued on the 25th day of August, 1901, issued by William McKinley, President of the United States, and which is recorded in Volume 82 at page 447 of the records of the General Land Office of the United States; that a copy of said trust patent is attached hereto marked plaintiff's Exhibit 1 and made a part of this petition as fully as if set out herein verbatim; that the trust period mentioned in said trust patent has been extended pursuant to law and said land is being held by the United States in trust for the sole use and benefit of this plaintiff who is the wife of Paukune who died about 1919 leaving a will; that the plaintiff inherited an undivided $1/3$ interest in and to said allotment; that the United States possesses a supervisory control over the land which is held by the United States for the sole use and benefit of the allottee and his heirs throughout the original or any extended period of restriction.

2. That title 25 USCA 348 provides that at the expiration of said trust period the United States will convey said lands by patent to said Indian or his heirs in fee discharge of said trust and free of all charge or incumbrance whatsoever; that said trust period has not expired and said [fol. 12] lands are non-taxable under the laws of the United States; that no final patent has been issued.

3. That the County Assessor of Caddo County, Oklahoma, has illegally assessed the above described lands as shown by the tax rolls for 1947, in the sum of \$21.32; that said assessment was illegal and without authority of law; that the said defendant County Treasurer of Caddo County, Oklahoma, has extended the same on the tax rolls and shows the 1947 ad valorem taxes in the amount of \$21.33 as assessed against the above described property; that the County Treasurer of Caddo County has advertised said land for sale on November 1, 1948, and said lands will be sold on said date for taxes unless the County Treasurer of Caddo County is restrained and enjoined from selling said property; that the County Treasurer has notified this plaintiff of such assessment and such sale; that a copy of said notice is attached hereto and marked plaintiff's Exhibit 2 and made a part hereof as fully as if set out herein verbatim.

4. That the County Assessor has levied an illegal ad valorem tax on said land and the County Treasurer is attempting to collect an illegal tax as herein pled and pursuant to title 12 OSA 1397 the plaintiff herein is entitled to a permanent injunction against the said County Treasurer enjoining him from selling said land above described for illegal ad valorem taxes and is entitled to a permanent injunction against the said defendant County Assessor of [fol. 13] Caddo County, Oklahoma, from levying future assessments of ad valorem taxes against said property during the trust period of said property and prior to the issuance of a final patent as provided by law, and is entitled to a judgment against the Board of County Commissioners of Caddo County, Oklahoma, decreeing that they have no right, title, claim or interest in and to said lands by reason of said illegal tax levy as hereinabove pled and requiring them to issue a proper certificate of error to the County Treasurer of Caddo County to accomplish the correction and to have said taxes stricken.

5. That unless the said County Treasurer is restrained forthwith he will continue to advertise said lands above described and sell the same on November 1, 1948, at a tax sale and the plaintiff requests the court to issue a temporary restraining order forthwith enjoining said County Treasurer from selling said lands on November 1, 1948; that

unless said County Assessor is enjoined he will continue to list and assess said property for ad valorem taxes in direct violation of the law, and upon a final hearing that this plaintiff have a permanent injunction against the County Assessor of Caddo County, enjoining him from listing and assessing said property above described for ad valorem taxes during the trust period and prior to the issuance of final patent thereto by the United States, and that the County Treasurer be permanently enjoined from selling [fol. 14] said lands for ad valorem taxes during the trust period of any extensions thereof and prior to the issuance of final patent by the United States;

6. That unless the Board of County Commissioners of Caddo County, Oklahoma, are permanently enjoined they will continue to claim an interest in and to the lands of the plaintiff above described by reason of illegal ad valorem taxes listed and assessed each year during the trust period and will continue to appropriate and expend money to advertise and sell the same and this plaintiff requests that the Board of County Commissioners be permanently enjoined from claiming any right, title or interest in and to said lands by reason of any illegal tax so levied, and from expending public monies for advertising said lands for sale.

Wherefore, premises considered, the plaintiff prays the court to issue a permanent injunction against the County Assessor of Caddo County, Oklahoma, enjoining him from listing and assessing the above described property for ad valorem taxes during the trust period of said property and prior to the issuance of a final patent by the United States, and that the County Treasurer of Caddo County, Oklahoma, be permanently enjoined from selling said lands during said trust period and that said illegal taxes be stricken from the tax rolls by decree of this court and that the County Treasurer be required to show said taxes as stricken and of no force and effect on the tax rolls of Caddo [fols. 15-16] County, and that the Board of County Commissioners of Caddo County, Oklahoma, be enjoined from claiming any right, title or interest in and to said lands above described by reason of the levy and assessment of ad valorem taxes against said lands and by reason of any

illegal sale thereof, and that the said Board of County Commissioners be enjoined from appropriating and expending monies out of the public funds of Caddo County, Oklahoma, for advertising said lands for sale and that the plaintiff have such other and further relief as the court shall find to be just, proper and equitable, and

Plaintiff further prays that pending a final termination of this case that the court grant a temporary restraining order restraining the defendant Vernie Bailess, the County Treasurer of Caddo County, Oklahoma, from selling said lands at tax sale on November 1, 1948, or any date thereafter under said advertisement of sale of lands for taxes now being published and that the plaintiff have her costs herein expended.

Hatcher & Bond, Attorneys for said Plaintiff, Chickasha, Oklahoma.

STATE OF OKLAHOMA,
County of Grady, ss:

[fol. 17]

EXHIBIT 1 TO PETITION

No. 951

The United States of America to all to whom these presents shall come, Greeting.

Whereas, There has been deposited in the General Land Office of the United States a schedule of allotments of land, dated May 10, 1901, from the Commissioner of Indian Affairs, approved by the Secretary of the Interior May 11, 1901, whereby it appears that under the provisions of the sixth section of the Act of Congress approved June 6, 1900 (31 Stats. 672), Paukune, an Apache Indian residing on the Kiowa, Comanche and Apache Reservation has been allotted the following described land, viz:

The South East quarter of the South West quarter, and the South West quarter of the South East quarter of Section three, and the North half of the North East Quarter of Section ten in Township five North

of Range Nine West of the Indian Meridian in Oklahoma, containing one hundred and sixty acres,

Now know ye, That the United States of American, in consideration of the premises and in accordance with the provisions of the fifth section of the Act of Congress of February 8, 1887 (24 Stats. 388), hereby declares that it does and will hold the land thus allotted, subject to all the restrictions and conditions contained in said fifth section as modified by the fifth article of the agreement ratified by said sixth section of the Act of June 6, 1900, for the period of twenty-five years, in trust for the sole use and benefit of the said Pau-kune, or in case of his decease, for the sole use of his heirs, according to the laws of the State or Territory where such land is located, and that at the [fol. 18] expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever.

In testimony whereof, I, William McKinley, President of the United States of America, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this twenty-fifth day of August in the year of our Lord One thousand nine hundred and one, and of the Independence of the United States, the one hundred and twenty sixth.

By the President: William McKinley, By F. M. McKean, Secretary, C. H. Bush, Recorded of the General Land Office. (Seal.)

Recorded Vo. 82, p. 447.

[fols. 19-24]

EXHIBIT 2 TO PETITION

COURTESY NOTICE

Anadarko, Oklahoma, October 4, 1948.

Dear Friend:

The County Assessor lists the following assessments in your name on the 1947 tax roll:

Real Estate tax: South Cement Twp.

Und. $\frac{1}{3}$ Int. SE $\frac{1}{4}$ SW $\frac{1}{4}$ & SW $\frac{1}{4}$ SE $\frac{1}{4}$ 3-5-9 9.57

Und. $\frac{1}{3}$ Int. N $\frac{1}{2}$ NE $\frac{1}{4}$ 10-5-9 11.76

21.33

The tax rolls shows the 1947 tax in the sum of \$21.33 unpaid. If this property belongs to you, it would be to your advantage to pay this tax as the delinquent list was advertised Oct. 1, 1948. Additional costs will accrue at that time. Sale will be Nov. 1st, 1948.

Yours truly, Vernie Bailess, County Treasurer.

[fol. 25] IN THE DISTRICT COURT IN AND FOR CADDO COUNTY,
STATE OF OKLAHOMA

[Title omitted]

TEMPORARY RESTRAINING ORDER—October 15, 1948

Now on this 15th day of October, 1948, came on for hearing the application and verified petition of the plaintiff, Juana Paukune, in the above entitled cause, requesting the court to issue a temporary restraining order against Vernie Bailess, County Treasurer of Caddo County, Oklahoma, restraining him from selling the following described lands for ad valorem taxes at the November 1, 1948, tax sale as advertised by the County Treasurer, to-wit:

An undivided $\frac{1}{3}$ interest in and to the Southeast Quarter of Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) and Southwest Quarter of Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$)

Sec. 3, and North Half of Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$) of Sec. 10, Township 5 North, Range 9 West, Caddo County, Oklahoma, containing 160 acres.

and it appearing to the court from said verified petition that the above described lands are not taxable for ad valorem taxes and that said order should be issued.

It is therefore ordered, adjudged and decreed by the court that Vernie Bailess, the County Treasurer of Caddo County, Oklahoma, his agents, servants and employees, be and are hereby restrained from selling the above described [fol. 26] lands at tax sale beginning November 1, 1948, or any date thereafter, as advertised, until further orders of this court.

The Sheriff of Caddo County, Oklahoma, is directed to serve a certified copy of this order upon the said Vernie Bailess, County Treasurer of Caddo County, Oklahoma, along with the summons.

This temporary restraining order is set for hearing on the 16 day of Nov. 1948, at ten o'clock A. M. in the district courtroom of Caddo County, Oklahoma, to determine whether or not a temporary injunction shall be issued.

L. A. Wood, District Judge.

SHERIFF'S RETURN

Received this writ on Oct. 15, 1948 and served a true and correct copy thereof to Vernie Bailess, Co. Treas., of Caddo Co. Okla. on Oct. 19, 1948 in Caddo County, Okla.

F. V. Yount, Sheriff, Curtis Williams, Undersheriff.

Serv. & Return .75.

(Endorsed): Filed Oct. 23 1948 Russell Glass, Court Clerk, By F. R. Harrison, Jr., Deputy. Recorded in J. 55, P. 297.

[fol. 27] IN THE DISTRICT COURT OF CADDO COUNTY,
OKLAHOMA

[Title omitted]

ANSWER—Filed January 4, 1949

Comes now the defendants above named and allege and state that for answer to the petition herein filed that they deny each and every material allegation therein contained, except for those hereinafter specifically admitted.

Defendants admit that Juana Paukune is the owner of an undivided One Third ($1/3$) interest in the following described Real Estate, to-wit:

Southeast Quarter of Southwest Quarter ($SE\frac{1}{4}$ $SW\frac{1}{4}$) and Southwest Quarter of Southeast Quarter ($SW\frac{1}{4}$ $SE\frac{1}{4}$) Sec. 3, and North Half of Northeast Quarter ($N\frac{1}{2}$ $NE\frac{1}{4}$) fo Sec. 10, Township 5 North, Range 9 West of I. M. containing 160 acres..

But defendants specifically deny that Juana Paukune is of Indian blood or that Juana Paukune appears on the rolls as a restricted Indian, and for further answer defendants allege that in the decree determining the heirs of the sllottee Paukune it was determined that Juana Paukune was of [fols. 28-31] Spanish blood.

Defendants specifically deny that the interest of the said Juana Paukune is non-taxable.

Wherefore; having fully answered defendants asks that the petition of the plaintiff herein be dismissed at the cost of the plaintiff.

Vernie Bailess, Co. Treasure-, W. B. Coleman, Co. Assessor, Ted A. Jones, Co. Commissioner, Frank Duncan, Co. Commissioner, George Dixon, Co. Commissioner, By: Brewster McFadyen, County Attorney for Caddo County Oklahoma.

And, thereafter, on the 7th day of January, 1949 in said Court and numbered cause the Court Clerk had the following entry in his Minute Records:

IN THE DISTRICT COURT IN AND FOR CADDO COUNTY, STATE OF
OKLAHOMA

No. 15445

JUANA PAUKUNE, Plaintiff,

vs.

VERNIE BAILLESS, County Treasurer of Caddo County, Oklahoma, et al., Defendants

"Permission to file Answer out of Time".

[fol. 32] By the Court: Let the record show it is satisfactory with both parties that the son of Mrs. Juana Paukune, Jose Paukune, is authorized to act as interpreter for Juana Paukune, the plaintiff herein, because she speaks very broken English. Thereupon,

THE OPENING STATEMENT ON BEHALF OF JUANA PAUKUNE, PLAINTIFF HEREIN WAS MADE BY MR. J. F. HATCHER.

Mr. Hatcher: I would like for the record to show no reply has been filed in this case but the Court may consider a general denial as filed to the answer of the defendants herein.

By the Court: Alright, Sir.

Your Honor; the plaintiff, Juana Paukune, filed a suit in here on October 15th, 1948 against the County Treasurer, the County Assessor and the Board of County Commissioners of Caddo County, Oklahoma, and she alleged in her petition that she was the owner of the beneficial interest in and to an undivided one-third interest in

The Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 3, and the North Half of the Northeast Quarter of Section 10, Township 5 North, Range 9 West of the Indian Meridian, containing 160 acres,

as evidenced by a certificate called a trust patent, No. 951, issued on the 25th day of August, 1901 by William McKinley, the President of the United States, and that the patent is recorded in Volume 82 at Page 447 of the records

of the General Land Office of the United States; a copy of that was attached to the petition and that the trust period mentioned in the trust patent has been extended pursuant to law and the land is being held in trust for the benefit of the plaintiff, wife of Paukune who died on or about 1919—the records will show the exact date of his death. The plaintiff inherited an undivided one-third interest in the allotment; that the United States possesses a supervisory control over the land for the sole use and benefit of the allottee and his heirs throughout the original or any extended period of restriction.

And the plaintiff alleges in her petition under Title 25 USCA 348 provides that at the expiration of the trust period the United States will convey the land by patent to said Indian or his heirs in fee discharge of said trust and free of all charge and encumbrances whatsoever and that the trust period has not expired and the lands are non-[fol. 34] taxable under the laws of the United States, no patent has been issued, there is no fee simple patent, and the Caddo County Assessor illegally assessed these lands for the year 1947 in the sum of \$21.33 and the assessment is illegal and without authority of law and the defendant County Treasurer of Caddo County, Oklahoma has extended the same on the tax rolls and shows the 1947 ad valorem taxes in the amount of \$21.33 assessed against this land. The County Treasurer has advertised the land for sale on November 1, 1948 and they were going to be sold unless restrained and a temporary order was issued in this case to prevent the sale until such time as it could be heard.

Now, most of the evidence in this case is documentary evidence and the evidence will sustain these allegations as facts here. It is the contention of the plaintiff that when Paukune died that it did not effect his land at all so far as restrictions are concerned. The facts in this case will probably be all agreed upon. There is probably no contention or disagreement as to the facts, but the evidence will show here that when Paukune died that he left a will and he bequeathed, or rather devised under the terms of his will a one-third interest in this property to his wife, Juana Paukune, and a two-thirds interest to his son born of their marriage, Jose Paukune. That will was admitted

to probate. It was approved by the Secretary of the Interior pursuant to law and it was admitted to probate as shown by the records of Caddo County and the records we have here will be from the Indian Agency here.

By the Court: The Southern Plains Agency of Anadarko.

Mr. Hatcher: The Southern Plains Agency is one having charge and custody of records and one of the representatives [fol. 35] from that Agency is here and brought these records in Court here at the request of the parties.

By the Court: There is no objection to any of those?

By Mr. McFadyen: No, sir.

By Mr. Hatcher:

I think when we show this is still in trust, no fee simple patent has issued, that this land is restricted and non-taxable by the State of Oklahoma. That is about the only statement I believe I will make.

Thereupon,

THE OPENING STATEMENT ON BEHALF OF DEFENDANTS WAS
MADE BY MR. BREWSTER MCFADYEN

Mr. McFadyen: To the petition of plaintiff the County Treasurer of Caddo County and the Board of County Commissioners on behalf of Caddo County filed this answer, your honor: (Reads from Answer)

"Comes now the defendants above named and allege and state that for answer to the petition herein filed that they deny each and every material allegation therein contained, except for those hereinafter specifically admitted".

I am going to omit the description.

"But defendants specifically deny that Juana Paukune is of Indian blood or that Juana Paukune appears on the rolls as a restricted Indian, and for further answer defendants allege that in the decree determining the heirs of the allottee Paukune it was determined that Juana Paukune [fol. 36] was of Spanish blood.

Defendants specifically deny that the interest of the said Juana Paukune is non-taxable.

Wherefore, having fully answered, defendants ask that the petition of the plaintiff herein be dismissed at the cost of the plaintiff".

Your Honor, in this case we expect the testimony to be pretty much as follows: This land was allotted to Pau-kune, otherwise known as Big Whip. The majority of the people remember him under that name; that Paukune died approximately in 1919, left surviving him his wife; that a hearing was had for the purpose of proving his will and distributing his estate; that the plaintiff appeared at the hearing; she was asked the question if she was of Indian blood and at that time she said, "No, not any. I am a Mexican". That as a result of this hearing the Secretary of the Interior made his finding in 1920; that our contention is under the law the one-third interest became taxable at that time; that she was not among the class of persons who are exempt from the payment of taxation. It is only the one-third interest of Juana Paukune the County is attempting to tax. They are not attempting to tax the other two-thirds of this real estate.

Jim, I think we can stipulate these are exact copies of the original?

Mr. Hatcher: Alright.

Mr. McFadyen: I imagine we will stipulate to them as we introduce them?

Mr. Hatcher: Alright.

[fol. 37] STIPULATION REGARDING CERTAIN EXHIBITS, PHOTOSTATIC COPY OF TRUST PATENT, AND COPY OF REPORT OF EXAMINER OF INHERITANCE OF OCTOBER 23, 1919

By Mr. Hatcher: Plaintiff introduces in evidence what the Reporter has marked as Plaintiff's Exhibit 1, which is a photostatic copy of the Trust Patent, No. 951, which is issued to PAU-KUNE, an Apache Indian, residing in the Kiowa, Comanche and Apache Reservation, signed by William McKinley, President of the United States, and dated in 1901.

Mr. McFadyen: Defendants stipulate a true and exact copy may be introduced in evidence.

By the Court: Let it be admitted.

Mr. Hatcher: We also have the original of that which we present to the Court.

(Plaintiff's Exhibit 1, being photostatic copy of Trust Patent No. 951, as introduced in evidence, is attached to the original of this Case Made and made a part hereof.)

Mr. Hatcher: The plaintiff introduces in evidence Plaintiff's Exhibit 2, which is a transcript of proceedings on the Will of Pau-kune, and which is presented here to this Court by the Southern Plains Agency, and we ask leave of the Court to withdraw this transcript and ask the Reporter to make a copy of it and substitute a copy of it in this record so we can deliver the original back to the agency.

By Mr. McFadyen. It is so stipulated that it may be introduced.

(A full, true and complete copy of Plaintiff's Exhibit 2 as introduced in evidence is attached and made a part of part of this Case Made, the original having been withdrawn by permission of the Court.)

(Here follows 1 Photo, folio 38)

The United States of America,

To all to whom these presents shall come, GREETING.

Whereas, There has been deposited in the General Land Office of the United States a schedule of allotments of land, dated May 11, 1901 from the Commissioner of Indian Affairs, approved by the Secretary of the Interior, May 11, 1901 whereby it appears that under the provisions of the sixth section of the Act of Congress approved June 6, 1900 (31 Stats., 672), Pau-kune

an Apache Indian residing on the Bedonko, Comanche, and Apache Reservation has been allotted the following-described land, viz: The South East quarter of the South West quarter of the South West quarter of the South East section three and the North half of the East quarter of section ten in Township 11 N. of Range nine West of the Indian Meridian in Oklahoma containing one hundred and sixty acres.

Now know ye, That the United States of America, in consideration of the premises and in accordance with the provisions of the fifth section of the Act of Congress of February 8, 1887 (24 Stats., 388), **HEREBY DECLARES** that it does and will hold the land thus allotted, subject to all the restrictions and conditions contained in said fifth section as modified by the fifth article of the agreement ratified by said sixth section of the Act of June 6, 1900, for the period of twenty-five years, in trust for the sole use and benefit of the said Pau-kune

or in case of his decease, for the sole use of his heirs, according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or encumbrance whatsoever.

In testimony whereof, I, William McKinley President of the United States of America, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand and the Seal of the City of Washington, this twenty-fifth day of August, in the year of our Lord one thousand nine hundred and ONE and of the Independence of the United States, the one hundred and twenty-sixth.

In the President:

William McKinley
By L. M. McLean Secretary

[fol. 39]

PLAINTIFF'S EXHIBIT 2

Triplicate

Will of Pau-kune, Kiowa Agency, Okla.

Kiowa Agency, Anadarko, Okla.

October 23, 1919.

C. F. Stinchecum, Superintendent, Anadarko, Okla.

My dear Mr. Stinchecum:

Inclosed herewith find papers in the matter of determining the heirs and pertaining to the Will of Pau-Kune, deceased APache Allottee No. 951.

It appears that under date of March twelfth, 1919, the decedent made a Will whereby he bequeathed $1/3$ of his allotment to his wife Juana Pau-kune, and $2/3$ of his allotment to his son Jose Pau-kune.

It further appears that he bequeathed the sum of \$5.00 to Arthur Cruz, who is a son of Juana Pau-kune by a prior marriage. It further appears that the decedent bequeathed and devised the residue of his estate in equal shares to Juana Pau-kune, wife, and Jose Pau-kune, son.

It appears from the testimony adduced at the hearing that the decedent was of stout mind and disposing memory at the time his Will was made, that the Will was interpreted to him in the Spanish language, and that he thoroughly understood the contents thereof. It further appears that no undue influence was brought to bear upon the decedent to cause him to devise and bequeath his property as he did.

Juana Pau-kune, wife of the decedent, raises no objection to the approval of the Will.

It is suggested that you ask the Office to make this case special and that a special slip be attached to the case. You are no doubt aware that there is Oil production on this allotment and any funds that may accrue cannot be disbursed until the heirs are determined or the Will approved.

These papers are submitted to you for whatever action you, may see fit to take in regard to the approval or disapproval of the Will of the decedent.

Very truly yours, Examiner of Inheritance.

WLW/EC

[fols. 40-50] Estate and Will of Pau-kune, Kiowa Agency, Okla.

Kiowa Agency, Anadarko, Oklahoma.

October 23, 1919.

Commissioner of Indian Affairs, Washington, D. C.
Sir:

Inclosed herewith find papers in the matter of determining the heirs and pertaining to the Will of Paukune, deceased Apache allottee No. 951.

Notices in this matter were sent out on September 11, 1919, for a hearing to be held at the Kiowa Agency, Anadarko, Oklahoma, on October 22, 1919. Juana Pau-kune was appointed guardian ad litem for Jose Pau-kune, and Arthur Cruz, minors.

Notices were posted at five different places on the Kiowa Reservation thirty days prior to the date of the hearing.

It appears that the decedent made a Will under date of March 12, 1919, the original and one copy of such Will are inclosed herewith.

None of the parties testifying knew anything in regard to the marriage of the decedent to Tschase-chu, deceased Apache allottee No. 538, but the Register of Indian Families shows them to have been husband and wife, and the heirs of Tschase-chu were determined under date of October 11, 1909, and found to be as follows: (76214-09)

Pau-kune, husband $\frac{1}{2}$

Chah-le-mah, dau. $\frac{1}{2}$

The Register of Indian Families shews the father of Cha-le-mah to have been Dah-zane-ah-teel-chy.

It appears from the evidence adduced that Jose Paukune was the only descendant of the decedent.

The Will of the decedent has this day been submitted to the Superintendent for whatever action he may see fit to take in regard to the approval or disapproval thereon.

Very truly yours, Examiner of Inheritance.

WLW/FC

[fol. 51] TESTIMONY OF JUANITA OR JUANA PAU-KUNE, IN
THE MATTER OF DETERMINING THE HEIRS OF PAU-KUNE,
DECEASED APACHE ALLOTTEE No. 951.

STATE OF OKLAHOMA,
Caddo County, ss:

JUANITA OR JUANA PAU-KUNE after being duly sworn testifies as follows:

Q. What is your name?

A. Juanita or Juana Pau-kune.

Q. How old are you?

A. 40 years old.

Q. What is your post office address?

A. Cement, Oklahoma.

Q. How long have you lived in Oklahoma?

A. 13 years.

Q. Have you any Indian blood if so how much and of what tribe?

A. No, I am a Mexican.

Q. Did you know a person by the name of Pau-kune?

A. Yes.

Q. How was he related to you?

A. He was my husband.

Q. When did Pau-kune die?

A. On Friday, April 4, 1919.

[fol. 52] Q. How old was Pau-kune at the time he died?

A. I don't know his age.

Q. Where did Pau-kune die?

A. On his own allotment.

Q. Had Pau-kune improved this allotment and established a homestead there?

A. Yes.

Q. Are you now living on the allotment of Pau-kune?

A. Yes I have been living there since his death. Pau-kune and myself lived on this allotment about 4 years before he died.

Q. How many times was Pau-kune married?

A. I do not know of any other marriage than to myself.

Q. Then how and where were you and Pau-kune married?

A. July 24, 1911, by ceremony in Oklahoma, at the court house, Anadarko.

Q. Were you and Pau-kune living together as husband and wife when he died?

A. Yes.

Q. How many children did you give birth to that were begotten by Paukune?

A. One child: Jose Pau-kune, son, living, age 7 years.

Q. Did Paukune ever have any children by any other woman than yourself?

A. No.

Q. Did Pau-kune ever have any adopted children?

A. No.

Q. Who is Arthur Cruz?

A. He is a son of Frank Cruz, and myself.

[fol. 53] Q. Were you ever married before you married Pau-kune?

A. Yes I was married one time.

Q. Who was your first husband?

A. Frank Cruz.

Q. When how and where were you and Frank Cruz married?

A. About 1908 by ceremony at Toreson, Mexico.

Q. When how and where were you and Frank Cruz separated?

A. By the death of Frank Cruz on June 12, 1911.

Q. Who was the father of Pau-kune?

A. Simon Diaz. I do not know the exact date of his death, but he died before the death of Pau-kune.

Q. Who was the mother of Pau-kune?

A. Ynosente, who died before Paukune but I do not know the exact date of her death.

Q. When how and where were Simon Diaz and Ynosente married?

A. Before the birth of Pau-kune by ceremony at Chihuahua, Mexico.

Q. Did Pau-kune make a will?

A. Yes.

(Will read by Examiner and translated by Interpreter.)

Q. You have heard the will of the decedent read and translated do you object to the approval thereof?

A. I raise no objections to the approval of the will.

Q. Was Pau-kune of sound mind and disposing memory at the time he made this will?

A. Yes.

[fol. 54] Q. Did anyone unduly influence Pau-kune to cause him to make the will?

A. No he made it of his own free will.

Q. Did Pau-kune have any personal property held in trust by the Government at the time he died?

A. Nothing but money on deposit.

Q. Do you claim an interest in the estate of Pau-kune?

▲ Yes.

(Signed) Juanita.

I John Rivaz do solemnly swear that I can speak both the Spanish and English languages and that I have well and truthfully interpreted the foregoing testimony to the best of my knowledge and ability.

(Signed) John Rivaz, Interpreter.

Subscribed and sworn to before me at Anadarko, Oklahoma, this 22nd day of October 1919.

(Signed) Warner L. Wilmeth, Examiner of Inheritance.

Name: Juana Pau-kune.

Age: 40 years.

Address: Cement, Oklahoma.

Tribe: Mexican (Unallotted).

Means of knowledge: Good being the last wife of the decedent Interest in case: Heir.

Examiner's impression of intelligence and credibility of witness: Does not speak English. Is intelligent and appears to be truthful.

[fol. 55] TESTIMONY OF SA-TA-RO ROACHE, IN THE MATTER OF
DETERMINING THE HEIRS OF PAU-KUNE DECEASED APACHE
ALLOTTEE No. 951.

STATE OF OKLAHOMA,
Caddo County, ss:

SA-TA-RO ROACHE after being duly sworn testifies as follows:

Q. What is your name?

A. Sa-ta-ro Roache.

Q. How old are you?

A. 30 years old.

Q. What is your post office address?

A. Anadarko, Oklahoma.

Q. How long have you lived in Oklahoma?

A. I was born and raised here.

Q. Have you any Indian blood if so how much and of what tribe?

A. One fourth Comanche and three fourths Mexican.

Q. Did you know a person by the name of Pau-kune?

A. Yes.

Q. How long did you know him?

A. About 20 years.

Q. When did Pau-kune die?

A. April 4, 1919.

Q. How old was he when he died?

A. Between 80 and 90 years old.

[fol. 56] Q. Where did Pau-kune die?

A. On his allotment.

Q. Had he established a homestead on his allotment?

A. Yes.

Q. Is his wife Juana Pau-kune now living on this allotment?

A. Yes.

Q. How many times was Pau-kune married?

A. I only know of one marriage and that was to Juana Pau-kune.

Q. When how and where were Pau-kune and Juana Pau-kune married?

A. In 1911, by ceremony at Anadarko, Oklahoma.

Q. Were Pau-kune and Juana Pau-kune living together as husband and wife when he died?

A. Yes.

Q. How many children did Juana Pau-kune give birth to that were begotten by Pau-kune?

A. One child: Jose Pau-kune, son, living, age 7 years.

Q. Did Pau-kune have any children by any woman other than Juana Paukune, or any adopted children?

A. No.

Q. Was Juana Paukune ever married before she married Pau-kune?

A. Yes she was married to Frank Cruz who died in June, 1911.

Q. Who is Arthur Cruz?

A. He is a son of Frank Cruz and Juana Pau-kune.

Q. Did Pau-kune made a will?

A. Yes.

Q. Were you present at the time this will was made?

A. Yes.

[fol. 57] Q. Could Pau-kune speak any English?

A. No.

Q. What language did he speak?

A. The Spanish.

Q. Who interpreted the will to him?

A. I did.

Q. Did he thoroughly understand the contents of the will?

A. Yes.

Q. Was Pau-kune of sound mind and disposing memory at the time this will was made?

A. Yes.

Q. Did anyone unduly influence him to cause him to make the will?

A. No.

Q. Who else were present at the time this will was made besides yourself?

A. My father Benjamin Roache, John Rivaz, and Mr. Carswell. His wife Juana Pau-kune was present also.

Q. Do you claim an interest in the estate of Pau-kune?

A. No.

(Signed) Satara Roache.

Subscribed and sworn to before me at Anadarko, Oklahoma, this 22nd day of October 1919.

(Signed) Warner L. Wilmeth, Examiner of Inheritance.

[fol. 58] Witness (Name as shown on allotment schedule): Sa-ta-ro.

Sex: Male.

Age (as shown on census and annuity rolls): 30 years.

Address: Anadarko, Oklahoma.

Tribe: Comanche No. 886.

Means of knowledge: Good, having known the decedent for about 20 years and acted as interpreter at the time the will was made.

Interest in case: None.

Examiner's impression of intelligence and credibility of witness: excellent. Speaks English Fluently. Is intelligent and appears to be truthful.

[Vol. 59] TESTIMONY OF BENJAMIN ROACHE, IN THE MATTER OF DETERMINING THE HEIRS OF PAU-KUNE, DECEASED APACHE ALLOTTEE No. 951.

STATE OF OKLAHOMA,
Caddo County, ss:

BENJAMIN ROACHE after being duly sworn testifies as follows:

Q. What is your name?

A. Benjamin Roache.

Q. How old are you?

A. About 80 years old.

Q. What is your post office address?

A. Anadarko, Oklahoma.

Q. How long have you lived in Oklahoma?

A. Over 30 years.

Q. Have you any Indian blood if so how much and of what tribe?

A. I am a Mexican.

Q. Did you know a person by the name of Pau-kune?

A. Yes.

Q. Did you know a person by the name of Pau-kune?

A. Yes.

Q. How long did you know him?

A. About 30 years.

Q. When did Pau-kune die?

A. He died this last spring.

Q. How old was he when he died?

A. He was a very old man but I don't know just how old he was.

[fol. 60] Q. Where did Pau-kune die?

A. On his own allotment?

Q. Had he established a homestead on his allotment?

A. Yes.

Q. Does Juana Pau-kune his wife live on this allotment now?

A. Yes.

Q. How many times was Pau-kune married?

A. I only know of two marriages.

Q. Who was the first wife of Pau-kune?

A. I don't know her name she was an Apache woman and died before allotment.

Q. When how and where Pau-kune and this Apache woman married?

A. Before allotment by Indian custom.

Q. When and how were they separated?

A. By the death of the Apache woman.

Q. Did Pau-kune have any children by this Apache woman?

A. Not that I know of.

Q. Who was the second wife of Pau-kune?

A. Juanita or Juana Pau-kune.

Q. When how and where were Pau-kune and Juanita or Juana Pau-kune married?

A. In 1911 by ceremony at Anadarko, Oklahoma.

Q. Were Pau-kune and Juanita or Juana Pau-kune living together as husband and wife at the time he died?

A. Yes.

[fol. 61] Q. How many children did Juanita or Juana Pau-kune give birth to that were begotten by Pau-kune?

A. One child: Jose Pau-kune, son, living, age 7 years.

Q. Did Pau-kune have any other children than Jose Pau-kune?

A. No.

Q. Did Pau-kune ever adopt any children?

A. I don't think he did.

Q. Was Juanita or Juana Pau-kune ever married before she married Pau-kune?

A. Yes she was married one time and then to Frank Cruz. Frank Cruz died sometime in June 1911.

Q. Who is Arthur Cruz?

A. He is a son of Frank Cruz and Juanita or Juana Pau-kune.

Q. Did Pau-kune make a will?

A. Yes.

Q. Who interpreted at the time this will was made?

A. My son, Sa-ta-ro Roache.

Q. Were you present at the time this will was made?

A. Yes.

Q. Did you hear the will interpreted to Paukune?

A. Yes.

Q. Did he thoroughly understand the contents of the will?

A. Yes.

Q. What language did Pau-kune speak?

A. He spoke the Spanish language.

Q. Was Pau-kune of sound mind and disposing memory at the time he made this will?

A. Yes.

[fols. 62-64] Q. Did anyone unduly influence Pau-kune to cause him to make this will?

A. No. He made it of his own free will.

Q. Do you claim any interest in the estate of Pau-kune?

A. No.

Witnesses to mark:

Warner L. Wilmeth (Signed) Examiner of Inheritance.
Benjamin Roache His (Finger print) mark.

Subscribed and sworn to before me at Anadarko, Oklahoma, this 22nd day of October 1919.

(Signed) Warner L. Wilmeth, Examiner of Inheritance.

Witness (Name as shown on allotment schedule): Benjamin Roach.

Sex: Male.

Age (As shown on census and annuity rolls): 64 years.

Address: Anadarko, Oklahoma.

Tribe: Comanche No. 882.

Means of knowledge: Good, having known the decedent for about 30 years.

Interest in case: None.

Examiner's impression of intelligence and credibility of witness: Good. Speaks English but does not sign his name. Is intelligent and appears to be truthful.

[fol. 65]

WILL OF PAU-KUNE

Apache No. 951

I, Pau-kune, of Lawful age, of Cement, Caddo County, Oklahoma, do hereby make, publish and declare this my last will and Testament, in manner and form following:

First:

I direct that all my Just debts and funeral expenses be paid as soon after my decease, as conveniently can be done.

Second:

I give, devise and bequeath to my son, Jose Pau-kune, an undivided two-thirds ($2/3$) interest in and to the following described real estate situate in Caddo County, Oklahoma, to-wit: The south east quarter of the south west quarter ($SE/4$ of $SW/4$) and the south west quarter of the south east quarter ($SW/4$ of $SE/4$) of section Three (3) and north half of the north east quarter ($N/2$ of $NE/4$) of section Ten (10) in Township Five (5) north of range Nine (9) west of the Indian Meridian in Oklahoma, containing one hundred and sixty acres to have and to hold the same to him absolutely and forever.

Third:

I give, devise and bequeath to my wife Juana Pau-kune an undivided one-third ($1/3$) interest in and to the follow-

ing described real estate situate in Caddo County, Oklahoma, to-wit: The south east quarter of the south west quarter (SE/4 of SW/4) and the south west quarter of the southeast quarter (SW/4 of SE/4) of section three (3) and the north half of the north east quarter (N/2 of NE/4) of section Ten (10) in Township Five (5) north of range Nine (9) west of the Indian Meridian in Oklahoma, containing one hundred and sixty acres, to have and to hold the same to her absolutely and forever:

Fourth:

I give and bequeath to Arthur Cruz, the sum of Five (5) dollars.

Fifth:

All the rest, residue and remainder of my estate, real, personal and mixed wheresoever situate, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I give, devise and bequeath to my wife Juana Pau-kune and to my son Jose Pau-kune, share and share alike to have and to hold the same to them absolutely and forever.

[fols. 66-69] Sixth:

It is my wish that my family live upon and occupy the land hereinabove described as their home until my son Jose shall become of age.

Seventh:

I hereby revoke all former wills, heretofore made by me.

In witness whereof I have hereunto subscribed my name at my farm near Cement in Caddo County, Oklahoma, this Twelveth day of March A. D. 1919, in the presence of Satar-ro Roach, Ben Roach and C. H. Carswell whom I have requested to become attesting witnesses hereto.

Pau-Kune His X Mark.

Witness to mark:

At the request of the said Pau-kune I wrote his name and witnessed his mark.

(Signed) C. H. Carswell.

The foregoing instrument was subscribed, published and declared by Pau-kune as and for his last Will and Testament, in our presence and in the presence of each and all of us, and we, at the same time, at his request, in his presence and in the presence of each other, hereunto subscribe our names and residences as attesting witnesses this twelvth day of March A. D. 1919.

His Ben X Roach Mark.

Resds, Anadarko, Okla.

At the request of Ben Roach I *Rot* his name *en wytnessed* his mark.

Signed: John Rivaz, Anadarko, Okla.

Signed: Satero Roach, Anadarko, Okla.

Signed: C. H. Carswell, Anadarko, Oklahoma.

[fol. 70] Thereupon, all witnesses were called and oath administered, and Jose Paukune, acting as interpreter for Juana Paukune was sworn as follows:

By the Court: Do you swear you are to translate into Spanish to the witness questions propounded by counsel and to translate the answer of the witness from Spanish into English to the best of your ability, so help you God?

By Jose Paukune: I do.

Thereupon, JUANA PAUKUNE having been first duly sworn, was called to the witness stand on her own behalf, and testified as follows through her interpreter, Jose Paukune:

Direct examination.

By Mr. Hatcher:

Q. Tell her to state her name to the Court?

A. Juana Paukune.

Q. How old is she?

A. She says she is around 64 or 65. She can't remember her age.

Q. Where does she live at this time?

A. She lives at Chickasha, Oklahoma. 1101 Choctaw, residing there at the time.

Q. Are you the surviving wife of Pau-kune?

A. She is.

Q. When did you come to the United States?

A. She don't remember. It was back in the Indian Territory.

[fol. 71] Q. Ask her where she was born?

A. She was born in Durango, Republic of Mexico.

Q. Who was her father?

A. Robert Martinez. He was Indian.

By Mr. McFadyen: Comes now the defendant and moves the Court to strike the last three words of the answer in which she stated "He was Indian" for the reason that at the hearing held for the purpose of determining the heirs, probating the Will of Pau-kune, this plaintiff was asked the question if she was Indian and the reply to that question: "No, not Indian. I am Mexican". Based on the testimony at that time the Secretary of the Interior made his Order as to all matters. That Order is conclusive and binding upon all parties, has the effect of a judicial finding.

Mr. Hatcher: His finding as to heirs is conclusive, but not as to blood or quantum of blood.

By the Court: I am going to let the witness testify. I am going to take this case under advisement anyway. Let the witness testify and give him an exception.

Q. Do you know what Tribe of Indian your father belonged to?

Mr. McFadyen: Now my same objection applies to this question.

By the Court: Yes, sir.

A. No she don't want to say what Tribe. She says the Tribe of Indians they do, you know, they have Tribes in Mexico the same as in the United States. She could not say whether it was Aztec, Mayo or what.

[fol. 72] Q. Have you ever requested the United States Government through its Indian Agency to give you a fee simple patent to your land?

A. She has never applied for a patent in fee.

By Mr. Hatcher: Your Honor, it is stipulated at this time between counsel for the plaintiff and defendants that the Trust period covering this particular allotment has been extended from time to time and is still in full force and effect.

By Mr. McFadyen: As to that stipulation is to the land and not to the individuals. We will not stipulate she is an Indian and restricted but we will stipulate this land was issued what they call a trust patent and that this patent has been extended for an additional twenty-five years.

By Mr. Hatcher: And is being held under that extension in trust at this time.

By Mr. McFadyen: As to the Indian?

By Mr. Hatcher: As to the land.

By Mr. McFadyen: Jim, I don't think it is to her, whether she had a fee simple patent.

By Mr. Hatcher: I am not trying to stipulate anything except—

By Mr. McFadyen: Can we word that a little different?

By Mr. Hatcher: Here is what we will stipulate—we will not stipulate on the law. This patent provides—this trust patent—that for a period of twenty-five years that the United States of America does hold the land subject to all restrictions as modified by agreement for said Pau-kune, [fol. 73] or in case of his decease for the sole use of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever.”

By Mr. McFadyen: And that period has been extended for a period of twenty-five years.

By Mr. Hatcher: That period has been extended for a period of twenty-five years for whatever it means, and we also stipulate there has never been a fee simple patent or final patent issued to either Pau-kune or his heirs.

By Mr. McFadyen: Yes, sir, that is right.

Mr. Hatcher: I believe that is all I will ask, Mrs. Paukune.

Mr. McFadyen: I have no questions.

(Witness excused.)

Thereafter, JOSE PAUKUNE having been first duly sworn to testify - the truth, and nothing but the truth, was called on behalf of the plaintiff, and testified as follows:

Direct examination.

By Mr. Hatcher:

[fol. 74] Q. You are Jose Paukune? Is that right?

A. Yes, sir, that is right, I am Jose Paukune.

Q. Where do you live, Mr. Paukune?

A. Chickasha, Oklahoma, 1111 Minnesota Avenue.

Q. How old are you?

A. Thirty-seven years.

Q. How much education do you have?

A. Oh, equivalent to high school education.

Q. Do you have a family?

A. I do. One boy.

Q. You own what interest in this 160 acres of land involved here through your father's allotment?

A. Two-thirds interest.

Q. And are you in charge of it yourself or who is in charge of operating your two-thirds interest? In other words, who is running your business for you?

A. Well, I try to run it with the supervision of the Department, though.

Q. Do they lease and control your part of this allotment?

A. Yes, sir.

Q. You can't do anything without, or can you, without permission of the Indian Department?

A. That is right.

Q. The Secretary of Interior or his agents?

A. That is right.

Q. Have you requested a patent on your two-thirds?

A. I have never asked for a patent.

Q. Never asked for a patent in fee?

A. No, sir.

[fol. 75] Q. This property—is it producing oil property?

A. Yes, sir.

Q. And your two-thirds interest is an undivided two-thirds interest?

A. That is right.

Q. Do you feel that it is to a better advantage to operate the whole 160 acres as a unit rather than to divide the land or have you given that any thought?

A. Yes, I have given it thought lots of times but I brought it up with the Agency officials; nothing has been done to try to divide it. They some times refer back to the will—that I was supposed to get two-thirds; mother was to get one-third.

Q. That is the way it is handled now?

A. That is the way it has been handled all of these previous years up until now.

Q. Is this land, this oil and gas lease being operated under a departmental oil and gas lease?

A. Yes, sir.

Mr. Hatcher: I believe that is all.

Cross-examination.

By Mr. McFadyen:

Q. Were you granted the privilege of leasing of your land?

A. Yes, sir.

Q. You make the lease and they approve it?

A. I make the lease. It has to meet their approval.

Q. They have certain requirements?

A. That is right—certain regulations.

(Witness excused.)

[fol. 76]

OFFERS IN EVIDENCE

By Mr. Hatcher: We offer in evidence, under stipulation of counsel plaintiff's Exhibits Number 3 and 4. On August 21st, 1948 the County Treasurer mailed this card to Juana Paukane: (Reads Exhibit 4.)

(A full, true and complete copy of Exhibit 4, as introduced and read by counsel is as follows:)

Anadarko, Okla., Aug. 21, 1948.

(Courtesy Notice)

Dear Friend:

The County Assessor lists the following assessments in your name on the 1947 tax roll;

Real Estate tax: South Cement Twp.

Und. $1/3$ Int. $SE^{1/4}$ $SW^{1/4}$ & $SW^{1/4}$ $SE^{1/4}$ 3-5-9

Und. $1/3$ Int. $N^{1/2}$ $NE^{1/4}$ 10-5-9

Intangible tax: _____

The tax roll shows the 1947 tax in the sum of \$19.68 unpaid. If this property belongs to you, it would be to your advantage to pay this tax before the delinquent list is advertised Oct. 1 1948. Additional costs will accrue at that time.

Yours truly, Vernie Bailess, County Treasurer.

(Last Notice)

Plf's Ex. 4 11-21-49

[fol. 77] Mr. Hatcher: Then another one on October 4th, 1948. (Reads Plaintiff's Exhibit 3.) He describes this land again and shows a total of \$21.33.

(A full, true and correct copy of Plaintiff's Exhibit 3 as introduced and read by counsel is as follows:)

Anadarko, Okla. October 4, 1948.

(Courtesy Notice)

Dear Friend:

The County Assessor lists the following assessments in your name on the 1947 tax roll:

Real Estate tax: South Cement Twp.

Und. 1/3 Int. SE $\frac{1}{4}$ SW $\frac{1}{4}$ & SW $\frac{1}{4}$ SE $\frac{1}{4}$ 3-5-9 \$9.57

Und. 1/3 Int. N $\frac{1}{2}$ NE $\frac{1}{4}$ 10-5-9 11.76

21.33

The tax roll shows the 1947 tax in the sum of \$21.33 unpaid. If this property belongs to you, it would be to your advantage to pay this tax as the delinquent list was advertised Oct. 1, 1948. Additional costs will accrue at that time.

Sale will be Nov. 1st, 1948.

Yours truly, Vernie Bailless, County Treasurer.

Plf's Ex. 3 11-21-49.

[fol. 78] Thereupon, JUANA PAUKUNE was re-called to the witness stand, and Jose Paukune acting as Interpreter as before, testified as follows, under oath:

Direct examination.

By Mr. Hatcher:

Q. Mrs. Paukune, have you ever sold your part of this property of your husband's allotment, your undivided one-third interest?

A. No, she says she has been under supervision of the Department subject to all of their rules and regulations.

By Mr. McFadyen: To which we object for the reason she was under supervision of the Department is a conclusion on the part of this witness.

By the Court: Overruled. Give him an exception.

Q. Mrs. Paukune, does the Indian Department collect your rents for you from the oil companies and the tenants?

By Mr. McFadyen: To which we object as being incompetent, irrelevant and immaterial.

By the Court: Overruled. Ask her the question.

A. All her rentals come to this office—the South Plains Indian Agency and the checks are drawn on the United States Treasury signed by the Superintendent, Assistant Superintendent or Deputy. She says in the past they issued orders for groceries or clothing for her, signed by them. Of course there has been issued purchase orders for clothing, groceries. They don't do that any more.

Q. Do they give her the money now?

By Mr. McFadyen: We make the same objection.
[fol. 79] A. They give her the money now, yes.

Cross-examination.

By Mr. McFadyen:

Q. Have you ever applied for citizenship in the United States?

A. No.

Q. The answer is she never has?

A. She never has.

Mr. McFadyen: Do you have any objection to stipulating she is a native of Mexico and not a citizen of the United States?

Mr. Hatcher: I would not want to stipulate on that. There are some laws on that naturalization away back there that might make her a citizen. She married a citizen up here. I would not want to stipulate on that. I am not sure but that she is a citizen. I don't think it makes any difference.

Mr. McFadyen: I do.

Mr. Hatcher: You do?

Q. What year did you marry Paukune?

A. 1911; she believes. She has the marriage certificate there.

By the Court: The record in the transcript shows July 24, 1911.

By Mr. McFadyen: That is correct, your honor.

By the Court: At Anadarko.

By Mr. McFadyen: We might stipulate, Jim, that she married Paukune on the 24th day of July, 1911 at the court house at Anadarko, Oklahoma.

[fol. 80] By Mr. Hatcher: That is satisfactory.

By Mr. McFadyen: By C. Ross Hume, County Judge, and it becomes a question of law whether she is a citizen of Mexico or of the United States. She has never applied for citizenship.

Q. Have you ever tried to draw your funds out of the Agency—for the purpose of the question—has she ever tried to withdraw her funds to supervise herself?

A. No, she never has. She has been under the supervision and regulations all of this time.

Mr. Hatcher: What did she say about trying to draw them out?

Mr. McFadyen: The answer to the question is "No".

By Mr. Hatcher: The plaintiff rests.

DEMURRER TO EVIDENCE AND ORDER OVERRULING SAME

By Mr. McFadyen: Comes now the defendants and demur to the evidence of the plaintiff for the reason that said evidence shows no grounds or reason why the injunction prayed for by the plaintiff should issue—totally fails to sustain the allegations of the plaintiff's petition and asks the Court to dismiss said petition, dissolve the temporary restraining order heretofore issued by the Court on the 15th day of October, 1948.

By the Court: Overrule the demurrer. Give him an exception.

[fol. 81] FURTHER STATEMENT OF MR. MCFADYEN AND LETTER FROM W. B. MCGOWN TO S. A. COOK OF APRIL 7, 1932

Mr. McFadyen: Your Honor, I am going to read the transcript of the proceedings first, Plaintiff's Exhibit 2: Letter to C. V. Stinchecum, Superintendent. "My dear Mr. Stinchecum: Inclosed herewith find papers in the matter of determining the heirs and pertaining to the Will of Pau-kune, deceased Apache Allottee No. 951.

It appears that under date of March twelfth, 1919, the decedent made a Will whereby he bequeathed 1/3 of his

allotment to his wife Juana Pau-kune, and 2/3 of his allotment to his son Jose Pau-kune.

It further appears that he bequeathed the sum of \$5.00 to Arthur Cruz, who is a son of Juana Pau-kune by a prior marriage. It further appears that the decedent bequeathed and devised the residue of his estate in equal shares to Juana Pau-kune, wife, and Jose Pau-kune, son.

It appears from the testimony adduced at the hearing decedent made a Will whereby he bequeathed 1/3 of his at the time his Will was made, that the Will was interpreted to him in the Spanish language, and that he thoroughly understood the contents thereof. It further appears that no undue influence was brought to bear upon the decedent to cause him to devise and bequeath his property as he did.

Juana Pau-kune, wife of the decedent, raises no objection to the approval of the Will.

It is suggested that you ask the Office to make this case special and that a special slip be attached to the case. You are no doubt aware that there is Oil production on this allotment and any funds that may accrue cannot be dis-[fol. 82] bursed until the heirs are determined or the Will approved.

These papers are submitted to you for whatever action you may see fit to take in regard to the approval or disapproval of the Will of the decedent. Very truly yours, Examiner of Inheritance".

Father, Simon Diaz—I will skip that. Next (Referring to Plf.'s Exhibit 2) is Testimony by Juanita or Juana Pau-kune, signed by John Rivaz, Interpreter, and subscribed and sworn to by Warner L. Wilmeth, Examiner of Inheritance. Testimony of Sa-ta-ro Roache, which I am going to skip. It pertains to Pau-kune himself. The testimony of Benjamin Roache I am going to omit. The Notice of Hearing to Determine Heirs I will omit reading; also omit reading Will.

We now offer as Defendant's Exhibit 1 letter of Superintendent, Acting Superintendent W. B. McCown, Kiowa Indian Agency, dated April 7, 1932 to S. A. Cook, Apache, Oklahoma.

(To Mr. Hatcher) Do you have any objection to the introduction of this letter?

By Mr. Hatcher: Well; No, I don't have any objection to it, your honor. I don't think it has any binding force. I don't have any objection because it sets out the policy of the government.

Mr. McFadyen reads Defendant's Exhibit 1, a full, true and correct copy as introduced and read being as follows:

[fol. 83] DEFENDANT'S EXHIBIT 1—11-21-49

UNITED STATES—DEPARTMENT OF THE INTERIOR

Field Service—Kiowa Indian Agency

Anadarko, Okla., Apr. 7, 1932

Mr. S. A. Cook, Apache, Oklahoma

Dear Sir:

This is to refer to the allotment of Pau-kune (Big-Whip), deceased Apache allottee No. 951, described as the N/2 NE/4 Sec. 10 and SE/4 SW/4 and SW/4 SE/4 Sec. 3, all in Township 5 North, Range 9 West I. M.

The heirs to this allotment are: Jose Paukune 2/3 and Juana Paukune 1/3. Jose Paukune is a son of the allottee and, therefore, he is enrolled at this agency and classed as an Indian. Juana Paukune is the Mexican wife of the allottee and is not carried on the rolls of this agency or of any other agency.

As Juana Paukune is not an Indian, it is the policy of the Department that she be issued a patent in fee for her share in this restricted Indian land. However, it is not thought advisable to have a patent in fee issued upon her undivided 1/3 interest as this would complicate matter and cloud the title. Juana Paukune is a very hard person to deal with and has repeatedly refused to sign leases on this allotment. The Department has taken exception to this office leasing the share of non-Indian heirs in various allotments.

There are three lines of action that can be taken in this matter: One is to issue a patent in fee upon Juana Paukune's undivided 1/3 interest; another is to have this allotment partitioned and patent in fee issued upon her share;

and the other is for Jose Paukune to purchase the share of his mother, same being conveyed by restricted deed. The first line of action will be greatly dis-advantageous to all persons concerned and it is believed that one of the other two plans could be carried out. Jose Paukune has approximately ten thousand dollars to his credit here and it is believed that he could purchase his mother's share and the whole allotment would, therefore, retain its trust status.

You are, therefore, instructed to see Juana Paukune at your earliest convenience and see if she will agree to a partition or whether she desires to sell to her son, Jose. You should advise her that something must be done as the Department is unwilling to hold her share in trust any longer as she has no Indian blood.

[fol. 84] Please submit your report at an early date.

Yours respectfully, (Signed) W. B. McCown, Acting Superintendent.

Penciled Note attached: Apa 951

This old lady is in Wesley Hospital Oklahoma City and I could not see her when she comes home we will come to the agency and get this done. S. A. Cook.
(Deft's Ex. 1) 12-21-49

[fol. 85] MEMORANDUM OF TRIAL COURT'S JUDGMENT AND FURTHER STIPULATION OF PARTIES

(To Mr. Hatcher) Jim, we can stipulate here, I am sure, that the Secretary of the Interior's decision was rendered on January 2, 1920, Probate 7440-20?

Mr. Hatcher: Yes.

By Mr. McFadyen: It is stipulated that the decision of the Secretary of Interior was issued January 2nd, 1920, Probate 7440-20 in the Matter of the Allotment and Estate Record of Pau-kune.

Mr. Hatcher: Now the decision you are talking about is the determination of the heirs and the approval of the final probate of the will?

Mr. McFadyen: Yes, sir. They cannot find their copy in this Agency.

By Mr. McFadyen: We will rest, Your Honor.

Whereupon, after the hearing of testimony and introduction of evidence and argument of counsel, judgment was entered for the plaintiff granting permanent injunction, to which defendant excepts, and exceptions were by the Court allowed.

By Mr. J. F. Hatcher: It is stipulated between plaintiff and defendants that the County Assessor has assessed this one-third interest on the tax rolls since 1947 for 1947 and the following years and the County Treasurer has extended the tax on his rolls and is attempting to collect the tax and unless he had been restrained he would have sold it.

[fol. 86] IN THE DISTRICT COURT OF CADDO COUNTY,
OKLAHOMA

[Title omitted]

MOTION FOR NEW TRIAL—Filed November 21, 1949

Come now said defendants and move the court to vacate and set aside the judgment of this court rendered herein on the 21st day of November, 1949, defendants being aggrieved thereby, and to grant a new trial for the following causes which affect materially the substantial rights of said defendants.

First: Error of law occurring at the trial, and excepted to by the defendants.

Second: Error of the Court in overruling the demurrer to the evidence of the plaintiff.

Third: That the judgment and order of the Court is not supported by the law or the evidence, and are contrary to the law and the evidence.

[fol. 87] Frank Limerick, County Attorney of Caddo County, Okla., Attorney for the Defendants,
Brewster McFadyen, Special Attorney for Defendants.

IN THE DISTRICT COURT IN AND FOR CADDO COUNTY, STATE OF
OKLAHOMA

No. 15445

JUANA PAUKUNE, Plaintiff,

VS.

VERNIE BAILLESS, County Treasurer of Caddo County, Oklahoma: and W. B. COLEMAN, Assessor of Caddo County, Oklahoma: and BOARD OF COUNTY COMMISSIONERS OF CADDO COUNTY, OKLAHOMA, composed of TED A. JONES, FRANK DUNCAN and GEORGE D. NIXON, Defendants.

JOURNAL ENTRY OF JUDGMENT—December 16, 1949

Now, on this 21st day of November, 1949, came on for trial the above entitled cause, pursuant to regular assignment, the plaintiff, Juana Paukune, appearing in person and by her attorneys, Hatcher & Bond, and all the defendants above named appearing by Brewster McFadyen, the [fol. 88] legally appointed attorney appearing for the County Attorney of Caddo County, Oklahoma, and Lewis Allen, Ass't Co. Atty., to represent the defendants, and both sides agreed in open court that this trial be a final hearing and trial of this cause, and at the conclusion of the evidence that a final decree be entered in this case, and both sides announced ready for trial and the court, after hearing the evidence of witnesses duly sworn and examined by both the plaintiff and the defendants, and stipulations of counsel for both sides, and being well and fully advised in the premises, finds all the issues in favor of the plaintiff, Juana Paukune, and against the defendants, Vernie Bailless, County Treasurer of Caddo County, Oklahoma, W. B. Coleman, County Assessor of Caddo County, Oklahoma, Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon, and each of them.

The court finds that the plaintiff, Juana Paukune, is the owner of the beneficial interest in and to an undivided 1/3

interest in and to the following described land located in Caddo County, State of Oklahoma, to-wit:

SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 3, and the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 10, Township 5 North, Range 9 West of the Indian Meridian, containing 160 acres;

as evidenced by a certificate called a trust patent, No. 951, issued on the 25th day of August, 1901, to Pau-kune by William McKinley, President of the United States of America and which is recorded in Volume 82 at page 447 of the records of the General Land Office of the United States.

[fol. 89] The court further finds that the trust period mentioned in said trust patent has been extended pursuant to law and is in full force and effect at this time, and that the said land above described is being held by the United States in trust for the sole use and benefit of the plaintiff, who is the wife of Pau-kune who died about 1919, leaving a last will and Testament which was duly admitted to probate in Caddo County, Oklahoma, pursuant to law; that the plaintiff, Juana Paukune, was devised an undivided $\frac{1}{3}$ interest in and to said allotment of said Paukune; that the United States possesses a supervisory control over said land above-described which is held by the United States in trust for the sole use and benefit of the allottee, Paukune, and his heirs, throughout the original and any extended period of restriction and that the original period of restriction has been extended pursuant to law and is in full force and effect at this time.

The court further finds that the above described lands are non-taxable under the laws of the United States and the laws of the State of Oklahoma and that no final fee simple patent has been issued and that the fee simple title in and to said lands is still in the United States.

The court further finds that the County Assessor of Caddo County, Oklahoma, has illegally assessed the above described lands for ad valorem taxes, as shown by the tax rolls for the year of 1947 and thereafter, and that said assessment is illegal and without authority of law, and that the same has been illegally extended on the tax rolls of the County Treasurer of Caddo County, Oklahoma for

[fol. 90] the year of 1947 ad valorem taxes and subsequent thereto, and that unless the said County Assessor, County Treasurer and the Board of County Commissioners of Caddo County, Oklahoma, are permanently enjoined from selling said land at tax sale that they will proceed to sell the same, and they should be permanently enjoined from levying, assessing or selling said lands for ad valorem taxes and that the said County Assessor of Caddo County, Oklahoma, and the said County Treasurer of Caddo County, Oklahoma, should strike all assessments against the above-described lands from the assessment records and tax rolls of Caddo County, Oklahoma, and they should be permanently enjoined from advertising said lands for sale for ad valorem taxes.

It is therefore ordered, adjudged and decreed by the court that the said Juana Paukune is the owner of the beneficial interest in and to an undivided $1/3$ interest in and to the following described lands located in Caddo County, State of Oklahoma, to-wit:

SE $1/4$ of the SW $1/4$ and the SW $1/4$ of the SE $1/4$ of Section 3 and the N $1/2$ of the NE $1/4$ of Section 10, Township 5 North, Range 9 West, of the Indian Meridian, containing 160 acres;

and that said lands are non-taxable under the laws of the United States and the State of Oklahoma and that the United States owns the fee simple title in and to said land and that no final patent has ever been issued conveying the fee simple title to said lands and that said lands are restricted lands.

It is further ordered, adjudged and decreed by the Court that the County Assessor, County Treasurer and the Board of County Commissioners of Caddo County, State of Oklahoma, [fol. 91] be and are hereby permanently enjoined from assessing and placing said lands upon the assessment records and books and tax rolls of Caddo County, Oklahoma, for ad valorem tax purposes and are permanently enjoined from advertising and selling the above described lands for ad valorem taxes, and they and each of them are ordered to strike said assessments which are now shown on

said records, from the tax records of Caddo County, Oklahoma.

It is further ordered that the costs be taxed against the defendants.

The defendants, and each of them, except to each finding and each order and judgment of the court hereinabove made and exceptions are by the court allowed.

L. A. Wood, District Judge.

O. K. Hatcher & Bond, Attorneys for the Plaintiff.

O. K. Brewster McFadyen, Attorney for the Defendants.

O. K. Frank Limerick, County Attorney, Caddo County, Okla.

[fol. 92] IN THE DISTRICT COURT OF CADDO COUNTY,
OKLAHOMA

[Title omitted]

JOURNAL ENTRY OVERRULING MOTION FOR NEW TRIAL AND
ALLOWING APPEAL—December 16, 1949

On this 16th day of December, 1949, there came on for hearing the motion of the defendants herein for a new trial, Plaintiff appearing by her attorney, Jim Hatcher and the defendants by their attorney, Frank Limerick, County Attorney of Caddo County, Oklahoma, and Brewster McFadyen, Special Attorney. The Court having heard the arguments of counsel and being fully advised, upon consideration finds that the said motion for new trial should be overruled.

It is therefore ordered and adjudged that the motion of the defendants for a new trial be, and the same is hereby overruled; to which ruling of the Court defendants then and there excepted and gave notice in open court of their intention to appeal to the Supreme Court of the State of Oklahoma.

[fols. 93-99] And said defendants praying an appeal to the Supreme Court, and an extension of time within which to make and serve case-made, it is ordered that an extension of 60 days from this date be granted said defendants

to make and serve case-made, plaintiff to have 10 days thereafter to suggest amendments, same to be settled on 5 days notice in writing by either party. And it is further ordered that no bond be required of the defendants.

L. A. Wood, Judge.

[fol. 100]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
No. 34,547

VERNIE BAILLESS, County Treasurer, Caddo County, Oklahoma, and W. B. COLEMAN, Assessor of Caddo County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS OF CADDO COUNTY, OKLAHOMA, composed of TED A. JONES, FRANK DUNCAN and GEORGE D. NIXON, Plaintiffs in Error,

VS.

JUANA PAUKUNE, Defendant in Error

OPINION—April 29, 1952

SYLLABUS

1. The restrictions under the General Allotment Act and the amendment thereto, February 8th, 1887, c. 119, Section 5, 24 Stat. 389 (25 U. S. C. A. 348), run with the land and are applicable to it, not only in the hands of the allottee, but of his heirs as well, regardless of whether the heirs are of Indian blood or not.

2. Interest of heir in land allotted by Trust Patent under General Allotment Act, February 8th, 1887, c. 119, Section 5, 24 Stat. 389 (25 U. S. C. A. 348), is not subject to ad valorem taxes during trust period.

3. The undertaking of the United States Government in Trust Patent issued pursuant to General Allotment Act, February 8th, 1887, c. 119, Section 5, 24 Stat. 389 (25 U. S. C. A. 348), is to convey the lands at the end of the trust period free of all charge or encumbrance and imposes an obligation to keep the lands free from the burden or charge of State taxation, as well as of every other encumbrance.

[fol. 101] APPEAL FROM THE DISTRICT COURT OF
CADDO COUNTY

HON. L. A. WOOD, Judge.

Action by Juana Paukune against Vernie Bailess, County Treasurer, Caddo County, Oklahoma, and W. B. Coleman, Assessor of Caddo County, Oklahoma, and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon. Judgment for the plaintiff and defendants appeal.

AFFIRMED

Frank Limerick, County Attorney of Caddo County, Oklahoma, Brewster McFadyen, all of Anadarko, Oklahoma. For Plaintiffs in Error.

Hatcher and Bond, J. F. Hatcher, Chickasha, Oklahoma. For Defendant in Error.

[fol. 102] PER CURIAM:

This is an action by Juana Paukune to obtain an injunction to enjoin the County Assessor of Caddo County, Oklahoma, from listing and assessing real estate located in Caddo County for ad valorem taxes, and to permanently enjoin the County Treasurer of Caddo County from selling the land for delinquent taxes, striking said land from the tax rolls and enjoining the Board of County Commissioners of Caddo County from claiming any right, title or interest in the lands by reason of the levy and assessment of ad valorem taxes against same. The trial court granted the injunction and the defendants appeal.

The land in question was allotted and Trust Patent No. 951 issued to Paukune, an Apache Indian, dated August 25th, 1901. The Trust Patent reads in part as follows:

Now Know Ye, That the United States of America, in consideration of the premises and in accordance with the provisions of the fifth section of the Act of Congress of February 8, 1887 (24 Stats. 388), Hereby Declares that it does and will hold the land thus allotted, subject to all the restrictions and conditions contained in said fifth section as modified by the fifth

article of the agreement ratified by said sixth section of the Act of June 6, 1900, for the period of twenty-five years, in trust for the sole use and benefit of the said Pau-kune, or in case of his decease, for the sole use of [fol. 103] his heirs, according to the laws of the State or territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever."

Pau-kune died in 1919, and left a will, which was approved by the Secretary of the Interior, and probated, under which Juana Paukune, his wife, became the owner of an undivided one-third interest in the land and Jose Paukune, his son, became owner of the remaining two-thirds interest in the land. The land is oil producing and is being produced under a departmental lease insofar as the interest of Jose Paukune is concerned. Jose Paukune is enrolled and classed as an Indian. Juana Paukune is carried on the Department of the Interior records as not being an Indian, and is classified as a Mexican.

It was stipulated that the trust period provided for in the Trust Patent had been extended and had not expired at the time of the trial. No patent had been issued to Paukune or to Juana Paukune or Jose Paukune. Juana Paukune had never requested the issuance of a patent to her covering her interest in the land. Juana Paukune testified that she was born in Mexico and that her father was an Indian; but that she did not know the tribe, but that they had tribes in Mexico, the same as in the United States. [fol. 104] It is the opinion of this Court that the question as to whether Juana Paukune is an Indian is, under the facts in this case, not material. Section 5 of the General Allotment Act of February 8, 1887, 24 Stat. 388 (380), mentioned in the Trust Patent issued to Pau-kune, which may be found at page 746, Section 1124 of Oklahoma Indian Land Laws, Second Edition by Mills, reads as follows:

"Trust patent to allottees. (5) That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to

issue therefor in the name of the allottees, which patents shall be of the legal effect, and declared that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the state or territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever; Provided, that the President of the United States may in any case in his discretion extend the period."

25 U. S. C. A. 348, is derived from Section 5 of the General Allotment Act of February 8, 1887, cited above.

Section 8 of the General Allotment Act, which may be found at page 750, paragraph 1134 of Mills Second Edition, Oklahoma Indian Land Laws, provides:

[fol. 105] Par. 1134. Certain tribes excepted from provisions of act.—(8) That the provisions of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osages, Miami and Peorias, and Sacs and Foxes, in the Indian Territory, * * *". See 25 U. S. C. A. 339.

The defendants contend that Juana Paukune is not an Indian and that consequently her interest in the land is subject to ad valorem taxes although no patent has been issued to her, and that the exemption should be limited to Indian heirs of the deceased allottee. The language of the Trust Patent and of the law above stated do not make this distinction either expressly or by inference. It is stated in Mills, Oklahoma Indian Land Laws, Second Edition, Paragraph 354, page 348, as follows:

"The restrictions under the General Allotment Act and amendment run with the land and are applicable to it, not only in the hands of the allottee, but of his heirs as well. Any attempted alienation of the land by the heir, or any beneficiary interested in it or its

rents, or the profits accruing therefrom, during the trust period, is absolutely void. And such restrictions are applicable to the heirs, regardless of whether the heirs are of Indian blood or not."

In *Reed v. Clinton, et al.*, 23 Okla. 610, 101 P. 1055, we had occasion to pass upon the validity of a conveyance by a white person who was an heir of an Indian Allottee, and which white person was an adopted member of the tribe. Therein it was said:

[Vol. 106] "The only question involved in this case is as to whether or not the conveyance from the defendant in error, John Clinton, to the father of the plaintiff in error, was valid. Section 5 of the act of Congress approved February 8, 1887 (24 Stat. 389, c. 119; 1 Supp. Rev. St. p. 535; 3 Fed. St. Ann. p. 494), provides: * * * * The plaintiff in error insists that because the defendant in error is a white person, and not an Indian by blood, although he was a member by adoption of said tribe of Indians, such restrictions would not operate as to him, but that it was the intention of Congress not to include in the term 'heirs' white persons, although members of said tribe. The clause, 'if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void,' when considered in connection with the entire section, is plain and unambiguous. We are not permitted to look at the purpose for which the statute may have been passed, with a view of overturning the plain terms of the statute as expressed."

In *United States v. Thurston County, Nebraska, et al.* 143 Fed. Rep. 287 (C. C. A., 10th Circuit (Nebraska)) the original allottees under the General Allotment Act died and their Indian heirs sold the inherited land with the consent of the Secretary of the Interior and the County sought to tax the proceeds. The Court said concerning the lands sold:

“ * * * The lands which were sold were held by the complainant in trust to preserve them for the exclusive use and benefit of the respective Indian allottees and their heirs until the expiration of 25 years from the respective dates of their allotments, and then to convey them to the allottees respectively or their heirs ‘in fee discharged of said trust and free of all charge or incumbrance whatsoever.’ 22 Stat. 342, Ch. 434 #6; 24 Stat. 389, Ch. 119, #5. The undertaking to convey them at the end of the 25 years free of all charge or incumbrance imposed an obligation to keep them free from the burden or charge of state taxation, as well as of every other incumbrance. U. S. v. Rickert, 188 U. S. 432, 23 S. Ct. 478, 47 L. Ed. 532.”

[fol. 107] In *Charles S. Childres, State Auditor of the State of Oklahoma, Appt., v. John Beaver and Benjamin Quapaw*, 270 U. S. 555, 70 L. Ed. 730, it was stated:

“It must be accepted as established that during the trust or restrictive period Congress has power to control lands within a state which have been duly allotted to Indians by the United States and thereafter conveyed through trust or restrictive patents. This is essential to the proper discharge of their duty to a dependent people; and the means or instrumentalities utilized therein cannot be subjected to taxation by the state without assent of the Federal government.”

See also *United States v. F. H. Reily*, 290 U. S. 33, 78 L. Ed. 154, wherein suit was brought by the United States to enforce its rights and regulations governing allotted Indian land held under a so-called trust patent issued pursuant to Section 5 of the General Allotment Act of February 8, 1887 (25 U. S. C. A., 348), wherein the Court said:

“It is settled, and is conceded, that a restriction on alienation such as is here shown is not personal to the allottee but runs with the land and operates upon the heir the same as upon the allottee. So it is apparent the heir's conveyance was void, unless in some way

the restrictions was removed before the conveyance was made."

Defendants stress the applicability of the case of *Levin-dale Lead and Zinc Mining Company et al v. Coleman*, 241 U. S. 432, 60 L. Ed. 1080. This case is not in point for the reason that it involved an Osage tribe allotment and this tribe was expressly excepted from the General Allotment Act.

Affirmed.

[fol. 108] This court acknowledges the services of Attorneys Charles E. Earnheart, James R. Eagleton and Milton R. Elliott, who as Special Masters aided in the preparation of this opinion. These Attorneys were recommended by the Oklahoma Bar Association, approved by the Judicial Council, and appointed by the court.

Halley, V. C. J. and Welch, Corn, Gibson, Davison, Johnson, O'Neal and Bingham, JJ. concur.

[fol. 109] IN THE SUPREME COURT OF THE STATE
OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING BRIEF IN SUPPORT THEREOF AND
APPLICATION FOR ORAL ARGUMENT

PETITION FOR REHEARING

Come now the plaintiffs in error, Vernie Bailess, County treasurer, Caddo County, Oklahoma, and W. B. Coleman, Assessor of Caddo County, Oklahoma, and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon, and respectfully represent to the Court that on the 29th day of April, 1952, a decision was handed down in the above [fol. 110] styled and numbered case to the effect that the undivided $\frac{1}{3}$ interest of the defendant in error, Juana Paukune, in and to the 160-acre allotment of her deceased restricted Apache Indian husband, Pau-kune, who died in

1919, was impliedly exempt from ad valorem taxes levied by Caddo County for the year 1947, notwithstanding that Juana Paukune is a non-Indian.

The basis of the decision in the foregoing particulars is that the 1/3 interest that Caddo County seeks to tax is being held in trust by the Federal Government for Juana Paukune as the devisee of Pau-kune and that since the Federal Government holds title the interest is as a Federal instrumentality impliedly exempt from ad valorem taxes.

The plaintiffs in error respectfully submit that in reaching the decision that it reached, this Court overlooked the fact that when allotted lands pass into the hands of non-Indians the Federal Government does not hold the non-Indian's interest in trust and the non-Indian can freely alienate his interest which means that that which created a Federal instrumentality, the dependent Indian, disappears and the non-Indian's interest is subject to tax.

Wherefore, premises considered, plaintiffs in error pray for a Re-hearing and a favorable decision.

[fol. 111]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—May 27, 1952

The Clerk is hereby directed to enter the following orders:

34,547—Vernie Bailess, Co. Treas., et al. v. Juana Paukune. Petition for rehearing and motion for oral argument denied.

Ben Arnold, Chief Justice.

[fol. 112] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

MOTION FOR ORDER STAYING MANDATE--Filed May 28, 1952

Comes now the plaintiffs in error, Vernie Bailess, County Treasurer, Caddo County, Oklahoma, and W. B. Coleman, Assessor of Caddo County, Oklahoma, and Board of County Commissioners of Caddo County, Oklahoma, composed of Ted A. Jones, Frank Duncan and George D. Nixon, and represent and show to the court that on April 29, 1952, this court handed down a decision herein to the effect that the undivided one-third interest of the defendant in error, Juana Paukune, a non-Indian in the allotment of her deceased Apache Indian husband was impliedly exempt from ad valorem taxes levied by Caddo County, Oklahoma, for the year 1947, and for said reason the District Court of Caddo County, Oklahoma, did not err in enjoining the sale of said interest for the purpose of satisfying ad valorem taxes levied for said year 1947.

In connection with the aforesaid decision, the plaintiffs in error timely filed a petition for rehearing which was denied [fol. 113] May 27, 1952.

The plaintiffs in error respectfully represent that they are convinced that this court erred in deciding as it did and they therefore intend to seek a review of the decision by the Supreme Court of the United States, which will be done by filing in said Supreme Court of the United States within ninety days from May 27, 1952, a petition for a writ of certiorari.

Wherefore, premises considered, plaintiffs in error, respectfully pray this *this* court enter an order staying its mandate herein until August 25, 1952, pending the filing of a petition for a writ of certiorari in the United States Supreme Court and if such petition is filed that the mandate be further stayed until the Supreme Court of the United States renders a final decision herein.

(signed) R. L. Lawrence; (signed) R. F. Barry, Attorneys for Plaintiffs in Error.

This is to certify that on the 28th day of May, 1952, a true and correct copy of the above and foregoing motion was mailed to J. F. Hatcher of the law firm of Hatcher and Bond at Chickasha, Oklahoma, postage prepaid.

(signed) R. F. Barry, Attorney for Plaintiffs in Error.

[fol. 114] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—June 12, 1952

On this 12th day of June, 1952, for good cause shown, the mandate of this court herein is ordered issued, but any enforcement of the mandate in the trial court is hereby ordered stayed until August 25, 1952, pending the filing of a petition for writ of certiorari by the plaintiffs in error in the Supreme Court of the United States, and if said petition is filed on or before said August 25, 1952, enforcement of the mandate shall be further stayed until such time as the Supreme Court of the United States renders a final decision herein, or until further order of this Court.

It is further ordered that the nature of the judgment herein is such as not to require the filing of a supersedeas or stay bond on the part of the plaintiffs in error.

Done by order of the Court in conference this 12th day of June, 1952.

(Ben Arnold), Chief Justice.

[fol. 115] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed June 10, 1952
To the Clerk of the above named Court:

You are hereby and herewith advised that the above named Plaintiffs in Error intend to seek a review by the

United States Supreme Court of the decision of the Supreme Court of Oklahoma of April 29, 1952, herein, which review will be sought through a petition for a writ of certiorari and in connection with which petition you are requested to prepare a certified transcript of the record in the above styled and numbered cause, which record should include the following things:

1. Petition in Error.

2. A full and complete transcript of the Case Made filed in your court and certified to by the District Court of Caddo County, Oklahoma.

3. The Supreme Court's decision of April 29, 1952.

[fol. 116] 4. The Plaintiffs' in Error petition for rehearing, excluding the brief in support thereof and application for oral argument.

5. Order of May 27, 1952, denying petition for rehearing.

6. Motion for order staying mandate.

7. Order staying mandate.

8. This praecipe for transcript of record.

Said transcript to be prepared as required by law and the rules of the Supreme Court of the United States and the transcript should be prepared and ready to be filed in the Supreme Court of the United States on or before August 25, 1952.

R. L. Lawrence, R. F. Barry, Attorneys for Plaintiffs in Error.

This is to certify that on the 10th day of June, 1952, a true and correct copy of the above and foregoing Praecipe for Transcript of Record was mailed to J. F. Hatcher of the law firm of Hatcher and Bond at Chickasha, Oklahoma, postage prepaid.

R. F. Barry, Attorney for Plaintiffs in Error.

[fol. 117] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 118] IN THE SUPREME COURT OF THE UNITED
STATES

STIPULATION AS TO PARTS OF RECORD WHICH SHOULD BE
PRINTED

The parties hereto, through their respective counsel, stipulate and agree that the following enumerated parts of the record herein need not be printed:

- (a) Praecipe for Summons (R. 20-21).
- (b) Summons (R. 22-24).
- (c) Praecipe for Subpoena Duces Tecum (R. 29).
- (d) Subpoena Duces Tecum (R. 30-31).
- (e) Proceeding relating to probate of Pau-kune's Will (R. 41-50), (R. 63-64), and (R. 67-69).
- (f) Formal matters appearing in Case-Made (R. 94-99).

The parties stipulate and agree that a summons was duly and regularly issued by the Clerk of the District Court of Caddo County, Oklahoma, and served on all of the petitioners; that Pau-kune's Will was duly and regularly probated by the proper Federal authorities and that Juana Paukune thereunder took an undivided one-third in Pau-kune's allotment.

It is further stipulated that all portions of the record that are not above specified shall, with the exception of those parts which can be properly deleted under the provisions of Rule No. 13, be printed and, therefore, that only [fol. 119] the following enumerated portions of the record shall be printed:

- (1) Petition in Error (R. 3-6).
- (2) Petition and Exhibits attached thereto (R. 10-19).
- (3) Temporary Restraining Order (R. 25-26).
- (4) Answer (R. 27-28).
- (5) Opening statement of Mr. Hatcher (R. 32-35).
- (6) Opening statement of Mr. McFadyen (R. 35-36).
- (7) Stipulation regarding certain Exhibits and photo-static copy of Trust Patent, and copy of report of Examiner of Inheritance of October 23, 1919 (R. 32-39).

(8) Testimony of Juana Paukune taken at proceeding to probate Will (R. 51-62).

(9) Pau-kune's Will (R. 65-66).

(10) Testimony taken in trial court (R. 70-80).

(11) Further statement of Mr. McFadyen and letter from W. B. McGown to S. A. Gook of April 7, 1932 (R. 81-84).

(12) Memorandum of trial courts judgment and further stipulation of parties (R. 85).

(13) Motion for new trial (R. 86-87).

(14) Journal Entry of Judgment (R. 87-91).

(15) Journal Entry Overruling Motion for New Trial and Allowing Appeal (R. 92-93).

(16) Opinion of the Supreme Court of Oklahoma (R. 100-108).

(17) Petition for Rehearing and Order Denying same (R. 109-111).

(18) Motion for Order Staying Mandate (R. 112-113).

(19) Order Staying Mandate (R. 114).

(20) Praecept for Transcript of Record (R. 115-116).

(21) Certificate of Court Clerk (R. 117).

The undersigned attorneys for the respondent herewith acknowledge receipt of a copy of the certified record to which reference is made herein.

Witness our hands this 28th day of June, 1952.

R. L. Lawrence and R. F. Barry, Attorneys for Petitioners.

Reford Bond, Jr., J. F. Hatcher of Hatcher & Bond, Attorneys for Respondent.

[fol. 120] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1952

No. 242

VERNIE BAILLESS, County Treasurer, Caddo County, Okla-
homa, et al., Petitioners,

vs.

JUANA PAUKUNE

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4474)